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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 6th March 1953

S.R.O. 460.—WHEREAS the election of Sardar Balwant Singh, as a member of the Legislative Assembly of the State of Patiala and East Punjab States Union from the Sirhind Constituency of that Assembly, has been called in question by two election petitions duly presented under Part VI of the Representation of the People Act, 1951, by Shri Shakti Parshad Shukla, son of Shri Atma Ram, Ward No. 1, House No. 1/709, Bassi Pathanan, District Fatehgarh Sahib and Shri Gurdeep Singh, son of Shri Iqbal Singh, Village Kotla Bajwara, Tehsil Sirhind, District Fatehgarh Sahib;

AND, WHEREAS the Tribunal appointed by the Election Commission, in pursuance of the provisions of sections 86 and 87 of the said Act for the trial of the said petitions has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order in Election Petition filed by Shri Shakti Parshad Shukla to the Election Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order.

BEFORE THE ELECTION TRIBUNAL AT KAPURTHALA

ELECTION PETITION No. 131 OF 1952

Shakti Parshad Shukla, son of Atma Ram, Ward No. 1, House No. 1/709, Bassi Pathanan, District Fatehgarh Sahib (Pepsu)—*Petitioner*

Versus

1. S. Balwant Singh, son of S. Jamiat Singh of Chanarthal Kalan, P. S. Mulepur,
2. Sh. Taraq Lal, Advocate, son of L. Dhan Raj, of Sirhind, P.O. and Tehsil Sirhind,
3. S. Joginder Singh, son of S. Harnam Singh, of V. Talanian, P. O. Bassi,
4. S. Gurbux Singh, son of S. Jodh Singh, of V. Ajrur, P. S. Rajpura,
5. S. Darbara Singh, son of S. Prem Singh, of V. Saunda, P. S. Sirhind,
6. Sh. Hari Kishan, son of Ram Partap, Brahmin of Sanipur, Teh. Sirhind.
7. Sh. Jagan Nath, son of Sh. Ram Patti, of Sirhind Mandi,
8. Sh. Sadhu Ram, son of Sh. Daulat Ram, of Sirhind Mandi,
9. Sh. Ram Parshad, son of Sh. Sada Nand, of Bassi (Pleader),
10. S. Balbir Singh, son of S. Gurcharan Singh, of V. Talanian, P. O. Bassi.

11. S. Nirpinder Singh, son of S. Harcharan Singh, of Bassi, P. O. Bassi,
12. S. Gurbachan Singh, son of S. Dalip Singh, of village Sangatpura, P.O. Sangatpura, Teh. Sirhind,
13. S. Surjit Singh, son of S. Hakam Singh, of Sangatpura, P.O. Sangatpura, Tehsil Sirhind, and
14. Sh. Mathura Dass, son of Sh. Salag Ram, Prop. Krishna Oil Mill, Sirhind Mandi—*Respondents*.

Election petition under section 81 of the Representation of the People Act, 1951, for declaration that the election of Sardar Balwant Singh, respondent No. 1 to the Patiala and East Punjab States Union Legislative Assembly held in January, 1952 for the Sirhind Constituency is wholly void.

PRESENT:

Shri Shakti Parshad with S. Kuldip Singh and S. Balwant Singh respondent No. 1 with L. Des Raj.

JUDGMENT

By the present petition Shri Shakti Parshad Shukla challenges the election of S. Balwant Singh respondent No. 1, to the Patiala and East Punjab States Union Assembly from Sirhind Constituency.

2. On 24th November, 1951, the petitioner presented to the Returning Officer for Sirhind Constituency three nomination papers, of which the copies are Exs. P. 1, P. 2, and P. 3, for nomination as a candidate from Sirhind Constituency to the said Assembly, and only one out of them was attended to by the Returning Officer at the time of scrutiny on 1st December, 1951, and it was rejected by the following order—

"Nomination paper of Shakti Parshad, son of Atma Ram, age 64 years, Ward No. 1, Bassi Pathanan, District Fatehgarh Sahib is rejected because the name of the Constituency of the proposer and the seconder is not given in the nomination paper. Objection was raised but was upheld."

3. At the election respondent No. 1 came out successful. The petitioner claims that his nomination paper was improperly rejected as it was not incumbent upon him to state the Constituency of the proposer and the seconder in the form of the nomination paper. In any case this was only a technical defect, which could not lead to the rejection of his nomination paper. He avers that the result of the election has been materially affected by the improper rejection of his nomination paper and seeks to have the election of the Sirhind Constituency declared to be wholly void.

4. Of the 14 respondents only S. Balwant Singh, respondent No. 1 has contested the petition, and *ex parte* proceedings have been taken against the rest. Respondent No. 1 pleads that the nomination paper of the petitioner was properly rejected and that the petition is not verified according to law.

5. Following issues arise in the case—

1. Whether the nomination paper of the petitioner was improperly rejected; if so, has the result of the election been materially affected thereby?
2. Is the petition not duly verified according to law; if so, what is its effect?

6. At the trial respondent No. 1 admitted that the petitioner filed the nomination papers, of which Exs. P. 1, P. 2 and P. 3 are copies, and he also admitted the genuineness of these nomination papers. The petitioner has examined himself alone in support of his case and respondent No. 1 has examined 24 witnesses besides putting himself in the witness box.

7. *Issue No. 1.*—The order of the Returning Officer rejecting the nomination paper, of which Ex. P. 1 is the copy, has been reproduced above. Strangely enough, no order was passed on the remaining two nomination papers. The Returning Officer appears to have been of the opinion that in items Nos. 10 and 14 of the prescribed form of the nomination paper not only the serial number of the proposer and the seconder in the electoral roll of the Constituency should have been given but the Constituency in which the proposer and the seconder were enrolled as voters must also have been mentioned. In item No. 1 of the nomination paper the petitioner mentioned Sirhind Constituency from which he was a candidate. Items Nos. 10 and 14 only require a statement as to the serial number of the proposer and the seconder in the electoral roll of the Constituency, and nothing else. Since the name of the Constituency is correctly noted against item No. 1 and

in view of the fact that the proposer and the seconder should belong to the Constituency from which the candidate is seeking election, the inference is obvious that the numbers of the proposer and the seconder as noted against items Nos. 10 and 14 refer to the same Constituency. We have before us a certified copy Ex. P. 1 of the rejected nomination paper of the petitioner. The genuineness of the original has been admitted by respondent No. 1. In this form in item No. 10 the proposer's serial number in the electoral roll of the Constituency given is "33 Madaphal, thana Sirhind", and similarly in item No. 14 the serial number of the seconder in the electoral roll of the Constituency given is "127 Madaphal, thana Sirhind". In fact both the proposer and the seconder have given not only their serial number in the electoral roll of the Constituency but have also given the name of their village, with the police station, in the electoral roll of which their numbers are to be found. It cannot be denied that police station Sirhind and village Madaphal are in the Sirhind Constituency. The learned counsel for respondent No. 1 urges that there is no evidence that the proposer and the seconder were in fact enrolled at the serial numbers given in the nomination paper in the electoral roll of village Madaphal, but respondent No. 1 has admitted the genuineness of the nomination paper and no more evidence is required on this point. Considered from any angle we find that the nomination paper of the petitioner with regard to items Nos. 10 and 14 was filled according to law and there was no defect in the entries in those items. The Returning Officer mis-conceived his function and was undoubtedly wrong in rejecting the nomination paper of the petitioner. He was not justified in throwing out the nomination paper of the petitioner on a ground which appears to us to be of no consequence.

The next question for consideration relates to the effect of the improper rejection of the nomination paper of the petitioner. The law is well settled that the improper rejection of the nomination paper raises an initial presumption that the result of the election has been materially affected. The reason is that the whole electorate is deprived of its right to vote for a candidate who was duly qualified to contest the election and had every right to place himself before the electorate and seek their support at the election. The presumption would require the strongest and most conclusive proof for its rebuttal and it lies heavily on the respondent to rebut it. The petitioner has stated that because of social and political work done by him in the past, he had all the chance of success at the election. Respondent No. 1 has on the other hand led oral evidence which consists of the opinion of the witnesses regarding (a) that the petitioner had no chance of being elected because he had no influence in the Constituency and because respondent No. 1 was the most influential candidate, (b) that only the candidates of the two parties, namely, Akali and Congress, had influence in the Constituency and no candidate unconnected with these parties had any chance of success, (c) that the petitioner was also nominated from the adjoining Constituency of Bassi and in the election forfeited his security, and (d) that some seven or ten years back the petitioner lost a Municipal election in town of Bassi. We are of the opinion that as regards (a) and (b) the opinion of the witnesses is no evidence at all and when they state whether the petitioner had or had not any chance of success they are merely delving in the realm of speculation and conjecture. With regard to (c) it is in the evidence of the respondent's witnesses, Dr. Sadhu Ram D.W. 12 and Shri Jagan Nath D.W. 13, that the petitioner in fact did not contest the election in the Bassi Constituency. As the petitioner did not take any interest in the contest in that Constituency, we are not surprised that he lost his security. Besides, the result in another Constituency, even though a neighbouring one, is no guide to what might have been the trend of the electorate, had the petitioner been permitted to contest the election. As regards (d) the matter is so old that it can have no bearing on the present case. We are, therefore, clear in our mind that the evidence produced by the respondent constitutes no evidence, indicating what might have happened at the election had the petitioner an opportunity to contest it. In *Hackney's case* (20 'M and H' 77) Grove J. observed: "I cannot see how the Tribunal can by any possibility say what would or might have taken place under different circumstances. It seems to me to be a problem, which human mind has not yet been able to solve, namely, if things had been different at a certain period, what would have been the result of the concatenation of events, upon the supposed change of circumstances. I am unable at all events to express any opinion, upon what would have been the result, that is to say, who would have been elected, provided certain matters had been complied with, which were not complied with." In a recent case *Delhi Election Tribunal in its Judgment reported at page 2451, in the Gazette of India Extraordinary, Part I—Section 1, dated 19th November, 1952, observed, "the contention is that the expression 'materially affected the result of the election' means that the returned candidate would not have been successful, and the question, according to the learned counsel, therefore,*

is, would Shri Ram Singh not have been elected had Shri Attar Singh been allowed to contest the election. It is sufficient to pose such a question to be at once aware that we are in the realm of pure speculation. We say this because we cannot conceive of any legal evidence, which could assist us in finding what would have happened, had Shri Attar Singh's nomination not been rejected." We are in entire agreement with the views expressed above. We, therefore, hold that the nomination paper of the petitioner was improperly rejected and the result of the election was materially affected thereby. The issue is decided accordingly.

8. *Issue No. 2.*—No argument was addressed on behalf of respondent No. 1 on this issue and we find that the petition is duly verified according to law.

As a result, we declare the election of Sirhind Constituency to be wholly void.

In view of the fact that the petitioner has led no evidence in the case excepting making his own statement and respondent No. 1 admitted the genuineness of the petitioner's nomination paper, it is ordered that the parties should bear their own costs.

Announced.

The 26th February, 1953.

(Sd.) MOHAR SINGH, *Chairman.*

(Sd.) KARTAR SINGH, *Member.*

(Sd.) JIA RAM SAXENA, *Member.*

[No. 19/131/52-Elec.III.]

P. S. SUBRAMANIAN,

Officer on Special Duty.